

In cases wherein the plaintiff proceeds in forma pauperis, the “officers of the court


1 shall issue and serve all process.” 28 U.S.C. § 1915(d). The court must appoint the
2 Marshal to effect service, *see* Fed. R. Civ. P. 4(c)(2), and the Marshal, upon order of the
3 court, must serve the summons and the complaint, *see Walker v. Sumner*, 14 F.3d 1415,
4 1422 (9th Cir. 1994). Although a plaintiff who is incarcerated and proceeding in forma
5 pauperis may rely on service by the Marshal, such plaintiff “may not remain silent and do
6 nothing to effectuate such service”; rather, “[a]t a minimum, a plaintiff should request
7 service upon the appropriate defendant and attempt to remedy any apparent defects of
8 which [he] has knowledge.” *Rochon v. Dawson*, 828 F.2d 1107, 1110 (5th Cir. 1987).

9 Plaintiff’s complaint has been pending for 120 days, and it is therefore subject to
10 dismissal without prejudice absent a showing of “good cause” if the parties have not been
11 served. *See* Fed. R. Civ. P. 4(m); *see also Walker*, 14 F.3d at 1421-22 (holding prisoner
12 failed to show cause why prison official should not be dismissed under Rule 4(m) where
13 prisoner failed to show he had provided Marshal with sufficient information to effectuate
14 service). Accordingly, plaintiff must either himself effect service on Defendants Hubbard
15 and Lee, or submit to the Court sufficient information to identify and locate them such
16 that the Marshal is able to effect service upon them. If Plaintiff fails to do so, or to show
17 cause why he cannot, on or December 8, 2012, his claims against the Defendants
18 Hubbard and Lee will be dismissed without prejudice pursuant to Rule 4(m) of the Federal
19 Rules of Civil Procedure.

20 In light of the foregoing service problems, Plaintiff’s motion for default judgment
21 against Defendants Lee and Hubbard is DENIED (docket number 21). Plaintiff’s motion
22 for a temporary restraining order (“TRO”) is DENIED because he has not shown a
23 sufficient likelihood of success on the merits of his claims (docket number 19).

24 IT IS SO ORDERED.

25 DATED: November 13, 2012

26 
27 JEFFREY S. WHITE
28 United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JERRY A BURTON,
Plaintiff,

Case Number: CV12-03158 JSW

CERTIFICATE OF SERVICE

v.


G D LEWIS et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 13, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jerry A. Burton
E85733
P.O. Box 7500
Crescent City, CA 95532

Dated: November 13, 2012


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk